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Dec. 31, 1970

POSITION PAPER

SUBJECT: Inter-American Convention on Terrorism
and Kidnapping

SUMMARY

The United States has become deeply concerned about kidnapping and other criminal acts against diplomats and other officials abroad. With perhaps the largest official overseas representation of any Government we have a strong interest in discouraging attacks against foreign officials and maximizing international cooperation for their protection.

A special session of the OAS General Assembly will meet in Washington on January 25 to consider a draft convention on kidnapping and other acts of terrorism prepared by the Inter-American Juridical Committee at the request of the OAS General Assembly. When the matter was first brought before the OASGA last June at the initiative of Argentina and Uruguay, the Secretary urged the Assembly to address itself particularly to terrorism directed against representatives of foreign states and suggested an international agreement defining these acts as international crimes and establishing appropriate measures to deal with them.

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The United States continues to favor an effective convention limited to crimes against foreign officials and international extortion. Such a convention would classify such acts, including kidnapping, as "common crimes" for purposes of extradition and asylum. It would include an obligation to seek out, to detain, and to extradite or prosecute persons guilty of such crimes. It would also include other practical measures of cooperation such as the exchange of relevant information. It is important that such a convention be open to accession by states not members of the OAS and that its provisions be generally acceptable in the international community.

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We have no illusions that an international convention of this character will provide a panacea for the problem of terrorism directed against foreign officials, as in many cases the offender will not be known or will remain in the country in which the crime was committed. However, such a convention would clarify international law on this subject and would help to mobilize international opinion against the perpetrators of these acts by branding them as common criminals. All nations including Communist states have a common interest in the protection of their officials abroad. Therefore, it is not unreasonable to hope that an Inter-American Convention carefully limited to crimes against foreign officials might help to bring about an eventual international consensus that the perpetrators of these crimes must be brought to Justice. Such a consensus could have a deterrent effect on the terrorist group carrying out these acts.

BACKGROUND

As a result of Argentine and Uruguayan initiatives, the OAS Permanent Council on May 15, 1970 unanimously adopted a resolution which reaffirmed enunciated principles of human rights; condemned acts of terrorism and especially kidnapping and extortion connected therewith as crimes against humanity; and recommended that the OAS General Assembly (OASGA) scheduled for June 28, 1970 take up the general action and policy of the OAS with respect to such crimes.

This item became the subject of high-level interests in the OASGA with most of the Foreign Ministers participating in the discussions. The Secretary gave his strong support to a new international agreement dealing with acts of terrorism against representation of foreign states. The result was an OASGA Resolution, adopted unanimously on June 30, which: (1) strongly condemned terrorism, kidnapping and extortion connected therewith, and specifically condemned such acts against representatives of foreign states; (2) declared such acts to be common crimes; (3) recommended that member states adopt preventive and punitive measures and exchange information; (4) instructed the Inter-American Juridical Committee (IAJC), an organ of the OAS, to prepare (a) an opinion on ways of implementing the resolution and (b) one or more draft inter-American instruments on such crimes when they affect international

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relations, and (5) expressed its adherence to enunciated human rights principles.

The IAJC met in Rio de Janeiro from August to October and adopted an "opinion" and draft convention by vote of seven (U.S. with reservations)-two (Chile, Peru)-two (Colombia, Mexico). This Convention was submitted to the Permanent Council which has convoked a special session of the General Assembly to consider the IAJC documents. The Council has submitted "observations" of its own together with the IAJC proposals for the Assembly's examination. The Council avoided, however, attempting to iron out among its members the differing viewpoints on the draft. The search for agreement on an acceptable version of the document thus remains the task of the General Assembly delegations.

THE IAJC DRAFT CONVENTION

The Inter-American Juridical Committee drafted a rather broad convention which seeks to combine measures aimed specifically at kidnapping of foreign officials, with more general provisions applicable to all crimes of terrorism in the context of extradition and asylum. (Text of IAJC draft, Tab A.) The principal features are as follows:

(1) The IAJC draft defines "acts of terrorism" to include (a) kidnapping or other crimes against the life, person or freedom of a limited class of foreign officials (mainly diplomatic or consular agents) or, in a broader alternative version, against all persons enjoying special protection under international law; (b) acts defined as terrorism under the laws of the state in which the acts were committed and the state in whose territory the offender is located; and (c) acts which produce terror or create a common threat to persons by means of methods which can cause great damage or public disturbances, or by taking over or wrecking a public conveyance.

(2) Terrorist acts are excluded from the category of political offenses for which asylum is traditionally granted, and extradition refused.

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(3) Contracting states agree to deny diplomatic or territorial asylum to persons who take part in terrorist acts, and to extradite or to prosecute persons found within their territories who are charged with such acts. The state to whom a request for extradition is made retains the authority to determine whether extradition should be granted.

(4) Procedures are established for strengthening cooperation among contracting states in preventing and punishing acts of terrorism and in processing extradition requests.

(5) Notwithstanding the above, discretion is afforded a contracting state "in exceptional circumstances" to expel an alleged offender without either prosecuting or extraditing him, implicitly as ransom for the release of a kidnap victim.

THE U.S. PROPOSALS

The United States favors a narrower, yet tighter and more precise convention than the one proposed by the IAJC, which we consider too broad in its definition of terrorism. The U.S. delegation has circulated a set of proposals which would narrow the scope of the convention essentially to crimes against foreign officials, and extortion. (Text of U.S. proposals, Tab B). The principal features are as follows:

(1) The convention would apply to kidnapping, murder and other crimes of violence against a broad class of foreign officials. We have further proposed in an alternative text that crimes against any foreign national involving extortion of a government be included.

(2) Because of the narrow scope of this convention, it would not be necessary to have any general definition of "terrorism".

(3) The treaty crimes would be classified as common crimes rather than political offenses for purposes of extradition and asylum irrespective of the motive for which they were committed.

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(4) The parties would accept the obligation to seek out, to detain, and to extradite or prosecute persons accused or convicted of such crimes.

(5) The crimes covered by the convention would be automatically included as extraditable offenses under existing extradition treaties between the parties.

(6) Extradition would be permitted to the state of nationality of the victim as well as to the state in which the offense took place.

(7) The agreement would include other practical measures of cooperation, based upon Article 8 of the IAJC draft, including the exchange of information.

DISCUSSION

Discussions of the IAJC draft by a working group of the Permanent Council's general committee revealed that differences over the draft among the delegations were in fact considerable. Brazil, supported by Argentina and some others has insisted upon a broad convention as proposed by the IAJC, one which would apply to all crimes of terror including internal acts not involving foreign nationals. A number of others, including the United States, Mexico, Venezuela, and Colombia, favor a strong but narrow convention focused on crimes against diplomats and other foreign officials. Some countries would prefer to see no convention at this time, notably Chile.

The US favors a narrower, more precise convention for both legal and political reasons. As the Secretary indicated in his speech to the GA last June, we understand the sensitivity of some member countries to the distinction which the IAJC draft attempts to draw between criminal acts of terrorism and legitimate expressions of discontent. Moreover, we are aware that some countries feel that terrorism, where it involves no interference in the conduct of international relations, is a matter to be dealt with internally rather than through international agreements. In eliminating the political offense exception to extradition for such a wide range of vaguely defined offenses, we would risk infringement on our traditional policy of political asylum.

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Under US constitutional law, it would be difficult to establish jurisdiction over offenses committed outside the United States by non-US citizens unless the connection between the crime and international relations makes it a crime under the law of nations and thus a sufficient basis for universal jurisdiction. Establishment of the jurisdiction required if a prosecution alternative appears in a convention would be further complicated by the difficulty of defining "terrorism" with sufficient precision.

The only possibility for meaningful action by the General Assembly would appear to lie in the direction of a narrow convention. A broad convention of the sort proposed by the IAJC could be passed only if the enforcement measures were considerably weakened -- a glorified resolution in convention form adding nothing to the action taken by the OASGA in June. A broad instrument, moreover, even if it obtained majority support in the General Assembly, would be ratified only by a limited number of states and would have little appeal to non-OAS members who have expressed interest in joining in a convention narrower in scope and tightly drawn. To be at all effective in dealing with the problem at hand, however, the convention should be one enjoying the widest possible support and acceptance, dramatizing the universal opprobrium in which such terrorist acts are held.

Submerging crimes against diplomats and foreign officials in a general convention would deprive the OAS of the opportunity to make a lasting contribution to international law. A broad convention on terrorism would have no impact on the thinking of the Eastern Bloc and would be controversial in Europe and the third world. Since at the moment the OAS may be the only effective forum for the articulation of a firm convention protecting foreign officials, a broad terrorism convention could ruin a valuable opportunity to organize international public opinion that could eventually have an effect on terrorist activity.

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